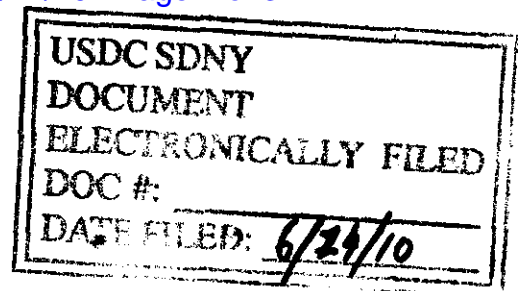*Application Granted. The Court will hold a telephone conference on June 17, 2010 at 11:30 a.m.*

DUNNEGAN LLC
ATTORNEYS AT LAW
350 FIFTH AVENUE
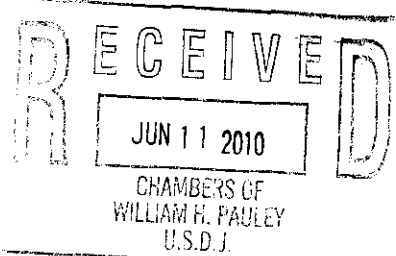NEW YORK, NEW YORK 10118

SO ORDERED:

WILLIAM H. PAULEY III U.S.D.J.

6/14/10

212-332-8300
212-332-8301 TELECOPIER

June 10, 2010

By Hand

Hon. William H. Pauley III
United States District Judge
Daniel Patrick Moynihan
  United States Courthouse
500 Pearl Street
New York, New York 10007

Re: Elsevier v. UnitedHealth Group
09 Civ. 2124 (WHP)

Dear Judge Pauley:

We are attorneys for plaintiffs in the above action. We are writing to request that the Court schedule a conference to address whether the Court should overrule the order of Magistrate Judge Maas entered June 8, 2010 pursuant to 28 U.S.C. § 636(b)(1)(A), denying our motion for a protective order.

In essence, Magistrate Judge Maas ruled that plaintiffs' request for a protective order to prevent the disclosure of its Source Code for the ScienceDirect® database could be addressed at a later date, and was therefore "premature." As explained below, we believe that this ruling was clearly erroneous and that the protective order should be granted or, alternatively, denied. Holding the issue in abeyance interferes with the making of plaintiffs' mini-motion for summary judgment scheduled to be filed on June 30, 2010, which defendants have stated that they intend to oppose in reliance upon Rule 56(f).

I.   Basis of the Motion for a Protective Order

Defendants served a discovery request seeking production of the Source Code for the ScienceDirect database. In connection with the anticipated mini-motion, we sought to

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confirm that defendants would withdraw this request on the basis
that the Source Code would be highly expensive for defendants to
review and that it would likely yield defendants little, if any,
admissible evidence given the documents that plaintiffs have
already produced concerning the operations and accuracy of the
ScienceDirect® database.

We accordingly wrote to Magistrate Judge Maas seeking
a protective order. By letter dated June 4, 2010, a copy of
which is enclosed, we argued that

- The Source Code was a trade secret that rested at
  the heart of a billion dollars in annual revenue,
  and was therefore too sensitive to disclose.
  Viacom International Inc. v. YouTube Inc., 253
  F.R.D. 256 (S.D.N.Y. 2008)("the protections set
  forth in the stipulated confidentiality order are
  careful and extensive, but nevertheless, not as
  safe as non-disclosure.")

- Assembling the Source Code for production to
  defendants would involve a massive effort on the
  part of plaintiffs, requiring 400 man hours, of 6
  computer professionals over 60 days.

- The enormity of the effort to produce the Source
  Code would be dwarfed by the effort necessary for
  defendants to examine it. The Source Code
  contains more than 2 million lines of code. Even
  if a computer professional could examine 100
  lines of code each hour, it could take 20,000 man
  hours to examine the Source Code. At $80 per
  hour, a modest rate for a level of skill
  involving the computer language, examination of
  the Source Code would cost defendants $1,600,000.

II. Defendants' Opposition to the Protective Order

Rather than oppose the motion on the merits,
defendants argued that the issue should be deferred because they
might withdraw the request in the future.

DUNNEGAN LLC

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        Plaintiffs argued in response that defendants were
using this as a means to set up a Rule 56(f) defense to the
mini-motion. In response to plaintiffs' letter to Your Honor
requesting permission to make that mini-motion, Mr. Sankaran on
April 23, 2010 wrote: "Defendants oppose the motion. It is
premature. It would not move the case forward. Defendants'
response would include a motion under Rule 56(f)." (Emphasis
added.)

        III. The Ruling of The Magistrate Judge

        The Magistrate Judge denied the motion as premature in
a three sentence, handwritten ruling, a copy of which is
enclosed.

        IV.   The Clear Need for a Ruling On the Motion

        If the motion for a protective order is held in
abeyance, defendants will use it as a basis to oppose the Rule
56(f) motion. If the motion is granted, it is no longer an
issue in the case. If the motion is denied on the merits,
plaintiffs can begin the process of assembling the source code
to minimize any delay in the making of their mini-motion.

        In failing to recognize those facts and resolve the
merits of the motion, the Magistrate Judge acted in a clearly
erroneous manner, that upsets the disposition of the merits of
this action.

                              Respectfully yours,

                              William Dunnegan SM

                              William Dunnegan

Cc: Sri K. Sankaran, Esq. (By e-mail)

                        DUNNEGAN LLC